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9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 EXACT SCIENCE PRODUCTIONS, LLC, }
13 PLAINTIFF, }
14 VS. }
15 FEMME KNITS INC., ET AL., }
16 DEFENDANTS. }

17 CASE NO. 3:07 cv 2296 JF
18 ANSWER OF DEFENDANTS
19 FEMME KNITS, INC.,
20 FOREVER 21, INC.,
21 FOREVER 21 RETAIL, INC.,
22 NORDSTROM, INC.,
23 dELIA*S, INC., AND
24 ALLOY, INC.:
25 DEMAND FOR JURY TRIAL

26
27 Defendants Femme Knits, Inc., Forever 21, Inc., Forever 21 Retail, Inc.,
28 Nordstrom, Inc., dELIA*s, Inc. and Alloy, Inc. ("defendants") hereby answer
29 the complaint of Exact Science Productions, LLC as follows by respective
30 paragraph number.

31 1. Admit federal question jurisdiction is proper pursuant to 28 U.S.C. §
32 1338(a) as it arises under federal copyright law.

33 2. Defendants do not contest venue in this district.

34 3. Admit this is an intellectual property action and defendants do not
35 object to district-wide assignment.

1 4. Admit this action seeks damages and injunctive relief for alleged
2 copyright infringement. Deny any copyright infringement occurred.

3 5. Denied based on lack of information or knowledge, except to note
the Secretary of State shows plaintiff's name without a hyphen.

4 6. Admit.

5 7. Deny, Hapa merged into Femme Knits, Inc. and no longer exists.

6 8. Admit.

7 9. Admit.

8 10. Admit.

9 11. Admit.

10 12. Admit dELIA*s, Inc. is a Delaware corporation with its principal
place of business at 50 West 23rd St., 9th and 10th Floors, New York, NY
11 10010. Deny the remainder.

12 13. Admit Femme Knits, Inc. has done and does business in this
district. Deny the remainder.

13 14. Admit defendants have done and do business in this district
(dELIA*s and Alloy by mail from out of state and without a physical place of
15 business here). Deny the remainder.

16 15. Deny based on lack of information or knowledge.

17 16. Deny based on lack of information or knowledge.

18 17. Admit plaintiff is the claimant on a copyright registration dated 16
October 2006 for a heart shaped cassette design that names "Gemocil Mateo"
19 as the author, registration number VA 1-378-516. Deny the remainder based
20 on lack of information or knowledge, particularly since the complaint does
21 not contain a depiction of the work itself.

22 18. Admit Femme Knits, Inc. sells its products in the United States and
other countries, Hapa merged into Femme Knits, Inc. and no longer exists,
23 and Femme Knits, Inc. uses various trademarks on its products including

1 Scrapbook Originals and Crafty Couture. Deny the remainder.

2 19. Deny.

3 20. Deny.

4 21. No response required.

5 22. Admit plaintiff is the claimant on a copyright registration dated
6 16 October 2006 for a heart shaped cassette design that names "Gemocil
7 Mateo" as the author, registration number VA 1-378-516. Deny the remain-
8 der based on lack of information or knowledge.

9 23. Deny.

10 24. Deny.

11 25. Deny.

12 26. Deny.

13 27. Deny.

14 28. Deny.

15 29. Deny.

Affirmative defenses

16 1. Defendants assert laches and estoppel from plaintiff's inexcusable
17 delay, to defendants' prejudice, in registering its copyright on 16 October
18 2006 and in filing this suit in April 2007, both over two years after defendant
19 Femme Knits, Inc. designed the accused work and plaintiff and defendants
20 offered the respective designs for sale.

21 2. Defendants assert, to the extent this is an affirmative defense and
22 not an element of plaintiff's count, that plaintiff lacks standing to sue be-
23 cause it was not the author of the work (which was not depicted in the
complaint) and it is not the owner of the copyright or the owner of exclusive
rights under the copyright.

3. Defendants assert, to the extent this is an affirmative defense and
not an element of plaintiff's count, that the alleged copyrighted work (which

was not depicted in the complaint) lacks originality and may have been copied from a prior source.

4. Defendants assert the accused design was fair use of a prior source.

5. Defendants assert, to the extent this is an affirmative defense and not an element of plaintiff's count, that plaintiff cannot show copying.

6. Defendants assert the accused design was an independent creation of Femme Knits, Inc.

7. Defendants assert they had innocent intent.

8. Defendants assert plaintiff's unclean hands.

Prayer

Defendants respectfully request judgment in their favor and against plaintiff in all respects; entry of an Order dismissing the complaint; an award of full costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505; and an award of any other and further relief as the Court may deem just or proper.

DATED:7 August 2007

WOOLLACOTT JANNOL LLP

By CYNTHIA WOOLLACOTT
Attorneys for defendants

Demand for jury trial

Defendants demand trial by jury pursuant to Local Rule 3-6.

DATED: 7 August 2007

WOOLLACOTT JANNOL LLP

By CYNTHIA WOOLLACOTT
Attorneys for defendants